

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 10950 of 2007(C)

PETITIONER:

M.S.PARAMESWARAN NAIR, DWARAKA HOUSE,
VENMONY VILLAGE, NOW RESIDING AT KIZHAKKE
MULLAPPALLIL HOUSE, KURUMALLOOR P.O.,
ETTUMANOOR, KOTTAYAM DISTRICT.

BY ADV. SRIBIJI MATHEW

RESPONDENTS:

1. THE SUB INSPECTOR OF POLICE,
VENMONY POLICE STATION, CHENGANNOOR,
ALAPPUZHA DISTRICT.
2. K.G.SUDHAKARAN NAIR,
S/O.DAMODHARA KURUP,
KANNAMPALLIL HOUSE,
VENMONY P.O.
3. K.KALIDAS, VARYATHU HOUSE,
KANDIYOOR MURI, MAVELIKKARA TALUK.
4. UTHAMAN, S/O.RAMAN PILLAI,
VARYAN MURI HOUSE, VENMONY WEST,
VENMONY P.O.,
5. CHANDRASEKHARA PILLAI,
S/O.NARAYANA PILLAI,
KOCHUTHARA HOUSE,
VENMONY P.O.

R1 BY GOVERNMENT PLEADER SRI.S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

R. BASANT, J.

W.P.C.No. 10950 of 2007 C

Dated this the 29th day of June, 2007

JUDGMENT

The grievance of the petitioner is that no proper action has been taken on a complaint filed by him before the learned Magistrate which was referred to the police under Section 156(3) Cr.P.C.

2. Notice is given. The learned Prosecutor reports that crime No.73 of 2005 had been registered. Investigation was completed and final report had been filed also. It was a negative final report referring the case. The petitioner then raises a grievance that he has not received any notice in that refer report. Report of the learned Magistrate was called for. The report shows that a negative report had been received. It also shows that the police had served notice of the refer report on the petitioner, but admittedly the court had issued no notice in the refer report to the defacto complainant/petitioner herein. The report of the learned Magistrate clearly shows that the refer report has been accepted without and before the victim/petitioner herein was given notice of the proceedings before the learned Magistrate for acceptance of the report.

3. The decision in **Gangadhar Janardan Mhatre** v. **State of Maharashtra** (2004 (3) KLT SN, Case No.107, Page 77) makes the position crystal clear that an aggrieved complainant is entitled to receive notice from the court before the learned Magistrate considers a refer report and accepts the same against the interest of the defacto complainant. Such notice having not been given, the acceptance of the final report by the learned Magistrate cannot be said to be proper, correct or legal. The same deserves to be set aside.

4. This Writ Petition is accordingly allowed. The acceptance of the final report in Crime No.73 of 2005 by the learned J.F.C.M. -I, Chengannur is set aside. The learned Magistrate shall consider such report afresh after giving notice to the petitioner. To save time and to avoid unnecessary protraction, the petitioner is directed to appear before the learned Magistrate on 30.7.2007 to raise his objections against the acceptance of the final report. He shall appear on that day. The learned Magistrate shall ensure that copies of the necessary documents are furnished to him on 30.7.2007 and appropriate orders are passed expeditiously.

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(R. BASANT)
Judge

